



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mrs VJ Brown and Others v**

**London General Transport  
Services Limited**

**Blue Triangle Buses Limited**

**East London Bus and Coach  
Company Limited**

**Heard at:** Watford

**On:** 20 to 23 and 27 November 2017  
28 November to 1 December 2017  
(in Chambers)

**Before:** Employment Judge Bedeau

## **Appearances**

**For the Claimant:**

Ms L Mankau, Counsel

**For the First and Second Respondents:**

Mr R Bailey, Counsel

**For the Third Respondent:**

Mr C Leudlow, Counsel

## **RESERVED JUDGMENT**

The claimants' unauthorised deductions from wages claims based on the non-payment of meal allowance are not well-founded and are dismissed.

## **REASONS**

1. In a claim form presented to the tribunal by Mrs Vicki Jane Brown on behalf of herself and 54 claimants, she claimed that there had been unauthorised deductions from their wages, as bus drivers, in respect of disturbance allowance, meal allowance and consequential pay increases. These claims were against the First and Second Respondents.
2. Employment Judge Mahoney, in his reserved judgment, held that in respect of 14 of the claimants, their unauthorised deduction from wages in respect of the non-payment of a disturbance allowance, was well founded. The

meal allowance claims were dismissed and the case was to be listed for a remedy hearing should the parties fail to agree appropriate compensation.

3. The claimants appealed against the judgment. The respondents cross appealed and the matter was heard by Mr Justice Langstaff, President, on 10 November 2016. Having heard submissions, His Lordship held that the claimant's appeal in relation to the judge's finding rejecting the meal allowance claims was allowed. The First and Second Respondents cross appealed in respect of the disturbance allowance claims being successful, was also allowed. His Lordship allowed the appeal and the judge's judgment was not Meek v City of Birmingham District Council [1987] IRLR 250 compliant. The case was remitted to a fresh tribunal.

### **The issues**

4. The parties have agreed that the issues for me to hear and determine were as follows:
  - 4.1 In relation to the drivers of all routes which are the subject of this claim (20, 462, 491, W4), at the time when they TUPE transferred from Arriva:
  - 4.2 Was it an express or implied term of their contracts of employment, incorporated by the documents described in paragraph 4 of the Amended Particulars of Claim, and as the claimants contend, when the meal relief was scheduled at a place where there was no agreed/recognised facility, the TfL drivers' rooms being an agreed/recognised facility?
5. Alternatively, in relation to the drivers of route 462:
  - 5.1 Did the letter dated 23 June 2008 from Peter Batty to Maurice Cullum entitle the route 462 drivers to the payment of meal allowance for all meal reliefs taken at Ilford, as the claimants contend; or
  - 5.2 Did the entitlement to meal allowance cease, as the respondents contend, when the meal relief was scheduled at Ilford TfL drivers' room, on the basis that it was an agreed/recognised facility?
6. Alternatively, had the route 462 drivers acquired an entitlement to meal allowance through custom and practice for the reasons (which are disputed) set out at paragraph 14 of the Amended Particulars of Claim?

### **The evidence**

7. Although Mrs Vicki Jane Brown is the lead claimant, I did not hear evidence from her as she was not called as a witness. I was also not invited to read her witness statement. On behalf of the claimants, evidence was given by Ms Jennifer Tilley, Route 462 driver; Mr Nicholas Warner, Route W4 driver;

Ms Elaine Muldoon, Route 491 driver; Mr Paul Wright, Route 20 driver; and Mr Michael Plummer, Unite convener, Stagecoach.

8. On behalf of the first and second respondents, I heard evidence from Ms Helen Clare Milligan, formerly general manager, Arriva; Ms Angie Ryder, depot general manager, Go-Ahead London; Mr Desmond Farthing, personnel manager, Go-Ahead Group plc. On behalf of the third respondent evidence was given by Ms Diane Hannan, operations director, Stagecoach London.
9. In addition to the oral evidence the parties adduced a joint bundle of documents comprising in excess of 336 pages.
10. At the commencement of the hearing, Mr Bailey, counsel on behalf of the first and second respondents, objected to the claimant's inclusion of a letter by Mr John Murphy, Unite the Union, regional officer dated 18 October 2017. He made reference to having seen documentation "from colleagues who work with Arriva clearly indicate that as a driver, at the point of transfer, you are entitled to a minimum of a 40 minute break which would be supplemented by a cash payment of £3.95 for each duty where a driver is scheduled to take his break away from the garage".
11. The letter was addressed to Mrs Brown and advised her that at the point at which she was transferred she was entitled to a meal allowance for having taken meal reliefs away from the garage.
12. Mr Bailey's objection was that Mr Murphy was not going to be called to be cross-examined on the document. The documentation he made reference to were not disclosed and formed part of the joint bundle and that he was merely expressing an opinion.
13. I took the view that the document is relevant to the issues in the case but that the weight to be attached to the content has to take into account the fact that he was not called to give evidence and be cross-examined. The tribunal is not bound by the formal rules of evidence applicable in the civil courts.

### **Agreed facts**

14. The parties agree certain factual matters in a document that was included in the joint bundle. These are as follows:

### The claims and the claimants

15. These are claims brought in respect of a pay supplement, namely meal allowance [MA]. The remaining claims for disturbance allowance [DA] were withdrawn at the preliminary hearing on 31 May 2017. The parties have agreed a List of Legal Issues.

16. 55 Claimants originally claimed MA. Of those, Fuaad Osman withdrew his claim and Stuart Taylor's was struck out and so there remain 53 claimants. The MA claims relate to drivers working 4 routes: 20, 462 and W4.

#### The respondents

17. The respondents are all bus companies operating contracts for the supply of services (the operation of bus routes) to Transport for London [TfL]. Originally, all claimants were employed by another bus company, Arriva London North Ltd [Arriva], a subsidiary of Arriva plc. All claimants were transferred, directly or indirectly, to one or other of the respondents. By indirect, it is meant that the claimants transferred first to one respondent, or to a non-respondent bus company, and then to another respondent. In so far as the transfers were indirect, some of the claimants were transferred initially to First Group plc. It is agreed that Blue Triangle, London General and Docklands Buses are wholly owned subsidiaries of Go-Ahead plc.

#### The background

18. Prior to the mid-1990s the London bus industry was in the public ownership of TfL through its subsidiary London Buses Ltd [LBL]. At that time the industry was hived down into about a dozen bus companies which were sold to transport companies or were the subject of management buy-outs. Since that time there have been new entrants to the market.
19. The bus companies are contracted to provide bus services to TfL. The bus companies are paid an adjustable contract price and the bus fares, now mainly Oyster, are retained by TfL. The bus routes are put out for competitive tender, typically every 5 years.
20. Since the introduction of service provision changes as a basis for a TUPE transfer, when a bus route transfers to a new operator, the employees allocated to that route (i.e. part of the organised grouping) will transfer to the new operator under TUPE unless:
  - 20.1 The object to the transfer, and/or
  - 20.2 They are offered and accept continued employment with the transferor.

#### Union recognition/negotiation of pay and allowances

21. Unite (formerly TGWU) have sole recognition rights with all the respondents, together with Arriva and First. Typically wage negotiations take place annually between Unite and the individual bus companies.

#### The routes

22. The routes which are the subject matter of these claims, together with a summary of what has and has not been paid by way of MA is set out at Schedule 1.

23. Other routes referred to in evidence, together with a summary of what has and has not been paid by way of MA is set out at Schedule 2.

Matters not in issue

24. It is not in issue that:
- 24.1 The claims are within time;
  - 24.2 The claimants do not have a contractual right to work any particular bus route and allocation of routes is a matter for the bus companies' discretion;
  - 24.3 The allowances would not have been the subject of any increases; and
  - 24.4 The majority of the claimants are on contracts that are the same, or at least not materially different from Mrs Brown's which do not reference MA. In respect of those claimants who have longer periods of service and therefore have older version contracts, a contract for Rupinder Binjhu is included in the bundle as an example [page 58A].

Matters in issue

25. This is just a summary of the issues which will be expanded upon in submission.

Meal allowance

26. The principal dispute revolves around contractual entitlement to MA.
27. The claimants contend that MA is payable for any meal relief scheduled away from the "garage", unless mutual express agreement has been reached to the contrary – agreement between Unite and management.
28. The respondents contend that entitlement to MA is only triggered where the meal relief is scheduled at a place where there is no agreed/recognised facility.
29. The various levels of facility referred to in evidence include:
- 29.1 Return to bus garage
  - 29.2 Meal relief at TfL drivers' room
  - 29.3 Meal relief at bus operator's drivers' room (not at garage)
  - 29.4 Meal relief at garage of different bus operator under formal agreement
  - 29.5 Meal relief at garage of other bus operator without formal agreement
  - 29.6 Meal relief at TfL drivers' room agreed to be inadequate
  - 29.7 Meal relief with no facility

**Schedule 1: The routes the subject of these claims**

Route 491

30. Route 491 was operated by Arriva from Enfield garage. The meal break was scheduled at Enfield garage and no MA was paid. On 8 June 2013, route 491 transferred to London General who operated it from Northumberland Park garage. The meal break was scheduled at Edmonton Green and no MA has been paid.

Route 20

31. Route 20 was operated by Arriva from Edmonton garage and meal breaks took place at Edmonton garage. No MA was paid. Route 20 transferred to Blue Triangle on 24 March 2012 and it was operated from Rainham garage. The meal break was scheduled at Walthamstow TfL drivers' room and no MA was paid.
32. On 22 June 2013 Route 20 transferred to London General to be operated from Northumberland Park. The meal break remained scheduled at Walthamstow TfL drivers' rest room and no MA was paid.
33. Some of the drivers assigned to Route 20 transferred with the route to Northumberland Park and some remained at Rainham and were assigned to other routes operated from Rainham.
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Route 462

35. Route 462 was operated by Arriva from Barking bus garage. Meal reliefs were scheduled to take place at Ilford Town Centre/Hainault Street pursuant to an agreement set out in a letter between Arriva and Unite dated 23 June 2008. MA was paid. For a number of years prior to the transfer to Blue Triangle on 24 March 2012 the drivers allocated to Route 462 had been using the TfL drivers' room at Hainault Street, Ilford. Blue Triangle operated Route 462 from Rainham garage. Meal reliefs were scheduled at Hainault Street TfL drivers' room. No MA was paid. The route transferred to East London on 25 March 2017 and meal reliefs are scheduled at Hainault Street TfL drivers' room. MA is not paid.

Route W4

36. Route W4 was operated by Arriva from Tottenham garage. Meal reliefs took place at Tottenham garage. No MA was paid. Route W4 transferred to First on 5 February 2011. First Group operated Route W4 from their Northumberland Park garage. Meal reliefs initially took place at Wood Green, Redvers Road where there were no facilities. MA was paid. London General bought the Northumberland Park garage on 31 March 2012. On 1

June 2013, the meal relief was moved to Tottenham Hale for scheduling purposes. MA continued to be paid as there were no facilities at that time. The meal relief moved to the redeveloped turnpike Lane bus station on 7 December 2013 where there was a TfL drivers' room. MA ceased to be paid. The meal relief returned to Tottenham Hale on 29 November 2014. MA is not paid.

**Schedule 2: other routes**

Route 128

37. Route 128 continues to be operated by Arriva from Barking. The meal relief takes place at Becontree Heath TfL drivers' room. MA is paid.

Route W16

38. Route W16 was operated by Arriva from Edmonton and the meal relief was scheduled at Edmonton Garage. No MA was paid. Route W16 transferred to First Group on 3 March 2012, and then to London General on 31 March 2012 and was operated from Northumberland Park. The meal relief was scheduled at Leyton where there was no facility, but drivers had informal use of the Stagecoach facility at Leyton. MA was paid. The route W16 transferred to CT Plus earlier this year (2017).

Route 135

39. Route 135 was operated by Arriva from Barking. Pursuant to an agreement set out in a letter between Arriva and Unite dated 23 June 2008, meal allowance was paid when the meal break period had not been extended to allow travel time to and from an agreed facility. Reliefs were scheduled at Crossharbour and MA was paid. Route 135 transferred on 23 May 2015 to Go-Ahead (Docklands Buses) who operated it from Silvertown. Initially MA was not paid, but it was later agreed that the drivers' room was not big enough and it was agreed that MA would be paid.

Route 78

40. Route 78 continues to be operated by Arriva from Ash Grove. Reliefs are scheduled at Stagecoach's facility in Aldgate Bus Station pursuant to a contractual arrangement with Arriva for which Arriva make a payment. MA is not paid.

Routes 38 & 73

41. Routes 38 and 73 continue to be operated by Arriva from Clapton (38), and Stamford Hill (73). Certain reliefs are scheduled at Mildmay Park where there is a drivers' rest room provided by Arriva. No MA is paid.

Route 275

42. Arriva operated the route 275 out of its Barking garage. The meal relief point was Barkingside (Tesco) and the Tesco café was used by some drivers. On taking over the route in 2012, East London scheduled the meal relief at Walthamstow Central bus station, where there is a TfL drivers' room. Initially, East London paid MA, believing the entitlement to have been triggered. MA was removed in April 2016 as East London did not consider it to be contractual and the meal relief was scheduled at a TfL drivers' room at Walthamstow Central.
43. MA was briefly reinstated for ex-Arriva drivers on the route 275 in December 2016, pending the outcome of local discussions between East London and Unite. It was removed once more with effect from 25 March 2017.

Route 86

44. Route 86 is operated by East London out of its Romford garage. This is not an ex-Arriva route. MA is paid.
45. The route runs between Romford station and Stratford Bus Station and there are TfL drivers' rooms at both ends where the meal reliefs are scheduled. Unite say the facilities at Romford Station are inadequate due to insufficient seating.

Route 496

46. Route 496 is operated by East London out of its Romford garage. This is not an ex-Arriva route. The route runs between Queen's Hospital and Harold Wood. The TfL drivers' room at Romford Station is used for meal reliefs, but the schedules team schedule meal reliefs at the Romford garage. Unite say the facilities at Romford Station are inadequate due to insufficient seating. MA is paid.
47. The parties are agreed that the operative time I have to determine whether the claimants were contractual entitled to a meal allowance was at the date the claim form was presented, namely on 28 October 2014. In relation to the third respondent, it acquired route 462 from the second respondent by way of a transfer on 25 March 2017. As this was over two years after the claim form was presented, Ms Mankau and Mr Leudlow did not invite me to make findings of fact post dating the presentation of the claim form.
48. In relation to route 491, evidence was given by Miss Elaine Muldoon. She worked for Arriva since October 2001 on route W16. That route was transferred from Arriva to another bus operating company called First Group on 3 March 2012. On 31 March 2012, the route was again transferred to the first respondent.
49. When Miss Muldoon commenced employment with Arriva she signed a contract of employment similar to the one produced by Mrs Brown which



simply sets out the main conditions of employment. It states the following amongst others;

“3. You must observe all the current rules and conditions of service. You will be given a rule book but if you would like to see the rest of the regulations ask your local manager to show them to you.

They include:-

- Rates of pay
- Days holidays and holiday pay
- Hours of work
- What happens if you are sick or injured
- Pensions
- Disciplinary procedure
- Grievance procedure
- Trade Union representation and membership

.....

8. Although we do our best to allocate you to a garage near as possible to your home, you must be prepared to work at any Arriva London North Limited garage.....” (pages 51 to 52 of the bundle).

50. Miss Muldoon told me that the contract, and I do accept this as fact, does not contain any terms and conditions relating to rates of pay, holidays/holiday pay, hours of work and sick pay. Neither she nor the other 491 drivers have seen the so-called regulations.

51. It is difficult to understand if Miss Muldoon and the other 491 claimants were not shown the document entitled “Regulations”, they clearly were entitled to ask to see it and if they had asked but were not shown, the T&GWU as well as Unite the Union, being the recognised Unions should have been approached to request disclosure on behalf of their members. I did not hear evidence that such a request was made by the drivers to their line managers. She stated that the only document which the route 491 claimants have been given, which contain details of the matters referred to in their contracts of employment, as detailed above, has been the “general information details for Arriva London North full-time drivers.” This is one of the documents relied upon by the claimants in support of their case that they were and are entitled to a meal allowance. The document gives details as at November 2010 of pay settlement between Arriva and Unite. It sets out pay rate; definition of grades; the annual pay review date; arrangements for night duties; hours of work; scheduling agreement which is a detailed account of the drivers working hours. It includes the following:

“Minimum relief – 40m (minutes) with supplement of £3.95 per duty for relief away from garage.” The document also sets out the various rates for disturbance allowance; meal breaks; spread over; annual leave entitlement; sick pay and sick pay schemes;

maternity/paternity provisions; pension provisions; part time or flexible working arrangements; funerals; moving house; and other pay related employment benefits. (59 to 63).

52. According to Miss Muldoon and the other claimants, this document constitutes what they describe as a collective agreement and the above quoted provision in respect of minimum relief allowance of £3.95, was incorporated into their contracts of employment. This is disputed by the respondents.
53. Miss Muldoon, if on an early shift, would attend first at the depot in Northumberland Park garage where she would be allocated a bus until she takes her meal relief. She would either drive to North Middlesex Hospital or Waltham Cross Bus Station and then drive to Edmonton Green for a changeover. Passengers would remain on the bus and the new driver would get on to continue with the route. She would get off to take her meal relief or meal break which would last about 40 minutes. After her meal relief she would then relieve another driver from his or her duty and continue to complete the second half of her shift.
54. The drivers room at Edmonton Green is owned by Transport for London which drivers are permitted to use. It contains a microwave oven, a tea and coffee vending machine; four tables with four fitted chairs around each table. There are no cooking facilities for preparing hot meals.
55. I have been taken to photographs of the drivers room on other routes and the facilities provided are similar to the room at Edmonton Green.
56. Miss Muldoon told me and I do find as fact that before she joined route 491 in June 2013, drivers on that route use to have their meal relief at Enfield Arriva Garage, but they did not receive a meal allowance. When Miss Muldoon was working on route W16, she was paid a meal allowance. From the agreed facts the first respondent operated from Northumberland Park. The meal relief was scheduled at Leyton where there was no canteen or restroom. The drivers had informal use of StageCoach's facility at Leyton, however, meal allowance was paid. Miss Muldoon in the first year of driving the W16 route, had her meals at Chingford Mount and when she was transferred she received a meal allowance payment. She said that she was never at Leyton.
57. She was asked whether she had seen an email from Angie Ryder, General Manager posted on a forum where drivers could post messages. A message was posted by Mr Craig Brownsey on 1 June 2014 who stated that he had discovered that the W16 drivers were going to lose their meal relief money as they had the use of Leyton Green Bus Garage and not all bus drivers use the garage apart from the toilets. Ms Ryder wrote on 2 June 2014 the following:

“Hello Craig, I don't know who told you that W16 drivers are losing their meal relief allowance but it is not true as far as I am aware.

StageCoach allow our staff to use the toilet facilities at Leyton Green Garage but they do not have to do so. Similarly, they are not obliged to allow our staff to use their canteen.

W16 drivers who transferred with the route from Arriva are entitled to receive meal relief allowance because there is not a recognised meal relief facility available for you. If the relief point was changed at some point in the future so that if a facility was available (Walthamstow, Turnpike Lane or Edmonton Green Bus Station or a Go-Ahead Garage) then you would no longer be entitled to a meal relief allowance. As you know, there are no convenient locations with facilities on your route where meal reliefs can be scheduled.

If you are unsure of such things in future, I would encourage you to ask our managers who can usually answer any questions that you may have." (128 to 129).

58. I heard evidence from Mr Paul Wright, who gave evidence on behalf of himself and other route 20 drivers. The route 20 drivers transferred on 24 March 2012 from Arriva to the second respondent. There was then a further transfer on 22 June 2013 to the first respondent. He had worked for Arriva since 1 August 2006 on route 20. He took his meal relief at Edmonton and was not paid a meal allowance as his meal relief was at the garage. Following the TUPE transfers he took his meal reliefs at Walthamstow Bus Station drivers room provided by Transport for London and was not paid a meal allowance.
59. Although Mr Wright said that at a meeting with the route 20 drivers some three or four years ago, Ms Ryder had allegedly said to them that she did not know why the route 20 drivers were not getting paid a meal allowance and that she was going to look into it, but did not come back to them with any further information. In cross-examination in relation to that evidence in paragraph of his witness statement, he said that he could not recall whether meal allowance was discussed. He recalled that Ms Ryder had said that she sat in on the old London Transport meetings and was aware of the provision of a meal allowance. I did not consider that that aspect of Mr Wright's evidence assisted me in any event, it was not accepted by Ms Ryder. Mr Wright's evidence on this point was very vague and imprecise.
60. I acknowledge that he, like Ms Muldoon received at the commencement of his employment with Arriva a contract setting out the main condition as referred to by Ms Muldoon and detailed earlier in this judgment. He said that he was given the general information details for Arriva London North full-time drivers dated November 2010, which he considered to be a collective agreement for the reasons given by Ms Muldoon and indeed the other witnesses on behalf of the claimants.
61. His routine from when he arrives for work at Northumberland Park is similar to that described by Ms Muldoon. He would check his vehicle before going on duty driving his bus. Once the first part of his duty for the day or for his

shift is complete he would go to Walthamstow Bus Station where the next driver to relieve him would take the bus where he would then go and have his meal relief break, that is his lunch break, in the drivers rest room. Drivers from other companies would also use the drivers room. All route 20 drivers would carry out their duty in a similar manner and would take their relief at Walthamstow Bus Station drivers room.

62. Since the transfer the first respondent on 22 June 2013, he and his route 20 drivers have not been paid a meal allowance on the basis that a drivers room is provided. He has not been told about “recognised facilities.”
63. In cross-examination he said that he had been driving buses for 17 years. His move to Northumberland Park came 15 months after his transfer from Arriva. He said that when he first transferred it was to Rainham where there were no drivers restroom or canteen facilities but he used the facilities at Walthamstow and did not receive a meal allowance. Thereafter he was transferred to Northumberland Park. At Rainham he and his fellow drivers were not told anything about meal allowance. A couple of weeks after moving to Rainham he said that he realised that he was not being paid a meal allowance and six months after the move to Rainham he was made aware of the reason given by management for not being paid a meal allowance, namely that a drivers room at Walthamstow Bus Station was available. He was then transferred in June 2013 to Northumberland Park where the meal relief was at Walthamstow Bus Station. He accused Mr Edwin Affainie, Local Union Representative and a former Arriva driver as well as Mr John Murphy, of not doing anything to advance his and the other drivers concerns in relation to meal allowance. They therefore went to a solicitor. He said you cannot interpret “away from garage” as away from garage or away from a recognised facility.”
64. On 17 November 2013 he submitted his grievance in respect of the meal allowance. He wrote;
- “Our terms and conditions clearly stating “we are entitled to meal allowance if we are away from the garage.” This issue was raised with Peter Russell whilst at Rainham when we first transferred.” (172).
65. Mr Wright, like the other claimants, made reference to the general information details for Arriva London North full-time drivers as at November 2010, document. As already referred to this states in respect of minimum relief £3.95 for relief away from garage. (71i to 71vii).
66. Ms Jennifer Tilley, gave evidence in respect of the route 462 drivers. She is currently employed by the third respondent. She worked for Arriva since 15 October 2001. She, along with other 462 drivers, transferred to the second respondent from Arriva on 24 March 2012. At the time of the transfer to the second respondent, her home garage changed from Arriva’s Barking Garage to the second respondent’s Rainham Garage. When she commenced employment with Arriva she signed a similar terms and

conditions document to the one already described. She also stated that the only documents she and the claimants were given which contained details of pay, holidays and alike, already referred to in the judgment, was the general information details for Arriva London North full-time drivers document. (59 to 63). There were also similar routes specific documents such as the one referable to route W4.

67. Prior to her transfer to the third respondent on 24 March 2017 in respect of the route 462 drivers, she would first attend at the depot in Barking where she would be allocated a bus for the day. She originally drove either to Ilford Hainault Street or Hainault Lowe. Once she completed her first duty for the day she would return to Ilford bus stand at Hainault Street where the next driver would take over and she would be relieved. She would have her meal relief in the drivers restroom. This was provided by Transport for London. Since the date of transfer to the second respondent on 24 March 2012, she and her route 462 drivers have not been paid their meal allowances. She asserts that the drivers room at Ilford bus stand is the same location as provided to the route 472 drivers while they were working at Arriva. This is the position now working for the third respondent from 24 March 2017.
68. Ms Tilley further stated that before she joined route 462, which was about three to six months prior to the TUPE transfer to the second respondent in March 2012, she and her colleagues used to have meal relief at Barking Arriva where canteen facilities were provided. They, therefore, did not receive a meal allowance. Arriva, as far as she was aware, decided that it was not beneficial for the route 462 drivers to come back to the garage to have their meal relief due to losing mileage and buses running late. The agreement in place was that meal allowance would be paid and drivers would take meal relief at Ilford Bus Station. When she transferred to route 462 the process of paying meal allowance and taking meal relief at Ilford Bus Station was already in place as it did not allow for meal relief to be taken at any garage. It remains her belief that those working on route 462 ought to have been paid £3.95 per duty since transferring to the second respondent. She was not told about "recognised facilities" but only if a meal relief away from the garage, they would be entitled to a meal allowance payment. The alleged collective agreement, does not mention anything about "recognised facilities." She stated that all 462 drivers received payment of meal allowance for each relief taken at Ilford drivers room until the date their employment transferred to the second respondent in March 2012 when immediately ceased. She made reference to copies of her wage slip in relation to a "cash adjustment" which was referenced to meal allowance payments. The wage slips provided cover 29 July 2011, a payment of £19.75 which would represent five meal reliefs and a wage slip dated 3 February 2012 of £15.80 which is four/for? meal allowance payments. (215).
69. Ms Tilley referred to an email by Miss Deborah Forrester, Personnel Manager at Arriva dated 20 May 2014 in response to an enquiry by Mr Desmond Farthing, Personnel Manager, Go Ahead London on 19 May

2014. Mr Farthing wrote to Miss Forrester the following, amongst other things;

“Sorry to bother you on this old chestnut but we seem to be running into a dispute with our ex Arriva folk over payment of meal relief allowance. Angie Ryder (GM Northumberland Park) summed it up:

Meal relief allowance – drivers maintain that a payment of £3.95 is payable unless they have their meal relief in the garage. My understanding is that it is payable where no recognised company or Tfl facility is available.

Curiously we have ex Arriva drivers who TUPE transferred directly to us and another we inherited through the acquisition of Northumberland Park but both groups have been managed in the same way by us and by First.

It is entirely possible that we both sought (wrongly) to apply our own systems so I'd be grateful for your view of this – is the remote meal relief allowance payable when the driver takes their meal relief away from the garage but is nevertheless able to access a designated Tfl or company facility?” (114 to 115).

70. Ms Forrester, Personnel Manager Arriva London North replied;

“We apply the same rule you do – away from a recognised facility. I believe it is the old LBL rule which has been passed down through generations.” (114).

71. Mr Farthing also contacted Mr Ken Robinson, Arriva Operating Manager, Barking Garage on how the meal allowance was applied at Hainault Street for the route 462 drivers. Mr Robinson responded by saying that their meal reliefs were at Barking Garage rather than Hainault Street and, therefore, they did not qualify for a meal allowance payment. Mr Alan Robson, Performance Manager, Rainham, Silvertown and Northumberland Park, emailed Mr Farthing on 28 August 2014 stating that he visited Hainault Street and Walthamstow bus stand and the facilities were almost identical, namely microwave ovens, hot drinks machines, and seating. There are also food retailers nearby to purchase food.

72. Mr Robson also wrote to Ms Ryder on 29 August in answer to her question how long Tfl's facilities at Hainault have been available. He wrote;

“The bus station has had a drivers room for quite some time. Hard to put an exact date on it but I believe it's been there for at least 14 to 15 years now in its current form. I've asked the Area Manager the question of when this arrived, but it pre-dates both the current and previous managers so again, unlikely we will get an exact answer.” (142 to 143).

73. Ms Tilley was taken to a letter sent by Mr Peter Batty, Commercial Director, Arriva to Mr M Cullum, Unite Convenor, Arriva London North, Palmers Green Garage dated 23 June 2008. It concerned the scheduling conditions for routes 135 and 462 at Barking. In relation to route 135 Mr Batty wrote;

“1. Payment of £3.68 for any meal relief scheduled away from the garage when the meal break period has not been extended to allow the necessary time to travel to and from an agreed facility.”

74. In relation to route 462 he wrote amongst other things, the following;

“The additional investment includes one bus, one duty on all days of the week, an increase in paid allowances and therefore in average earnings as well (estimated on average at over £3 per duty). A requirement of this investment is for meal reliefs to be taken in Ilford town centre. An additional ferrying duty will be provided between the garage and Ilford on Monday to Saturdays.

The saving in travelling time by not returning to the garage for relief is used to offset the cost of paying the full meal relief payment of £3.68 on both routes 462 and 135 for any meal relief scheduled away from the garage when the meal break period has not been extended to allow the necessary time to travel to and from an agreed facility. The saving contributes approximately £2.05 of the £3.68, the remainder being funded by the company.

75. The proposals set out above apply as appropriate to routes 135 and 462 at Barking at the present time and would not apply to any other routes without further discussion.

76. The letter was written to set out the proposed agreements reached at a meeting between Mr Batty and Mr Cullum on Friday 20 June 2008 at Edmonton regarding the scheduling conditions for routes 135 and 462 at Barking. (71a to 71c).

77. Ms Tilley said that she had not seen the letter. She referred to the alleged collective agreement where the wording is garage and not agreed facility. She acknowledged that it was an agreement between Unite and Arriva in relation to route 462. She maintained that the drivers restroom had always been at Ilford stand or bus station. She acknowledged that there are some routes where the drivers would take their meals away from the garage, but would not get a meal allowance payment. At the garage all the facilities for the drivers would be available such as fridge, lockers, hot and cold food served at discounted prices, freshwater and it was a relaxed environment. She acknowledged that there are still provisions for a meal allowance payment, the only question is what triggers it. She relies again on the wording of the alleged collective agreement.

78. Ms Tilley denied that route 78 drivers returned to Ash Grove. It was put to her that from the agreed facts route 78 is operated by Arriva from Ash Grove. Meal reliefs are scheduled at Stagecoach's facility in Aldgate Bus Station pursuant to a contractual arrangement with Arriva for which Arriva makes a payment, but a meal allowance payment is not paid. Ms Tilley stated that she had no information in relation to any agreement between management and Unite in respect of route 78. She had spoken to Mr Murphy who said that there had been no change from the wording "away from garage." She had not heard the term "recognised facility." She agreed that the alleged collective agreement relied upon by her do not set out the various criteria for the payments stipulated. She maintained that reference to "agreed facility" in the letter of 2008, was a reference to a garage.
79. Ms Tilley confirmed that there was a grievance in respect of meal allowance lodged on 17 November 2013. (77).
80. Drivers would not be entitled to a meal allowance after 10pm when the canteen facilities were closed.
81. In relation to route W4, I heard evidence from Mr Nicholas Warner he worked for Arriva since 24 December 2009 on route W4. During that time he also worked on other routes 243 and 168. On 5 February 2011, he along with the other W4 drivers were transferred from Arriva to First Group and on 31 March 2012, from First Group to the first respondent. While working for Arriva the garage was at Tottenham. When he worked for First Group it changed to Northumberland. The transfer to the first respondent resulted in him being based at Northumberland Park Garage. He would attend the depot at Northumberland Park where he would be allocated a bus for the day and after carrying out the normal checks of his vehicle he would set out on the first part of his duty which normally could last between two and five hours. He would finish the first part of his duty at Tottenham Hale Bus Station and engage in a live changeover. He would take his meal relief in the Tottenham Hale drivers restroom where there were similar facilities as in other restrooms. Drivers from others companies would also take their meal relief breaks at Tottenham Hale. As with the other claimants' meal reliefs generally would last between a minimum of 40 minutes and a maximum of 2 hours 12 minutes. After his meal relief he would take the next bus out and would either finish his shift at Northumberland Park or Tottenham Hale. If he finished at Tottenham Hale he would take a car back to Northumberland Park Garage.
82. While he and the other drivers worked for Arriva, they would take their meal reliefs at Tottenham Garage where full canteen facilities were available serving hot and cold food. As a result, no meal allowance payment was made. When he worked on route 168 he would take his meal relief away from the garage and would be paid a meal allowance. He also said that currently, when working on route 41 and his meal relief is less than one hour than he would be paid a meal allowance as he was



away from his garage. He also referred to the alleged collective agreements and to the non-specific route agreements (59 to 71vii).

83. He too referred to having been told and under the impression like his other W4 drivers that meal allowance was paid for meal reliefs away from the garage. He disagreed with Deborah Forrester's view in her 20 May 2014 email.
84. In cross-examination he was taken to the respondent's amended grounds of resistance and paragraph 5c which states;

“Route W4 was operating by Arriva from its Tottenham Garage, where meal reliefs took place. No other meal allowance was paid. Following a TUPE transfer to First Group on 5 February 2011, route W4 was operated from First Group's Northumberland Park Garage and meal reliefs took place at Wood Green, where there were no facilities. Meal allowance was paid. Subsequently, on 31 March 2012, the Northumberland Park Garage was sold to the first respondent and all routes and staff TUPE transferred. On or around December 2013, whilst there was an emergency schedule in place due to road works, the meal relief was scheduled to take place at Turnpike Lane TfL drivers room and, following discussions between Angie Ryder (then General Manager), and Edwin Affainie (Unite), it was agreed that the meal allowance would ceased to be payable because the meal relief was taking place at an agreed/recognised facility. The meal relief was moved to Tottenham Hale once the new bus station opened in 2014 where there is TfL drivers room.”

85. Ms Warner acknowledged that that may have been the agreement between the Union and management, he and his colleagues did not agree. There was an ongoing issue between Unite and the drivers in the way they represented the drivers on different routes.
86. He stated that he was aware of the words “recognised facility” in December 2013.
87. None of the claimants stated that they agreed to any deductions in respect of meal allowance payments.

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Employment Judge Bedeau

Date: ...17 May 2018.....

Sent to the parties on: .17 May 2018.....

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For the Tribunal Office